IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.24983 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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AVADHOOT ENGINEERING CO. - Petitioner
Versus
STATE OF GUJARAT THR' COMMSISIONER OF SALES TAX & ORS. - Respondents

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Appearance :
MR PRAKASH K JANI for Petitioner.
MS KRINA P CALLA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/12/2006

ORAL JUDGMENT

(Per: Hon'ble Smt. Justice Abhilasha Kumari)

Leave to amend the prayer clause is granted.

2. The present petition under Article 226 of the Constitution of India has been filed by the

petitioner, which is a partnership firm registered under the provisions of the Indian Partnership Act, 1932, praying for the relief to declare that winnowing fan manufactured by the petitioner is an agricultural implement not liable to be charged for sales tax in view of the notification under Section 49(2) of the Gujarat Sales Tax Act, 1969 (“the Act” for short) issued by the State Government, which has come into effect from April 1, 1996. It is further prayed to issue a writ of certiorari or any other appropriate writ to set aside: (1) the order dated August 30, 1996 passed by the Commissioner of Sales Tax under Section 62 of the Act; (2) the judgment and order dated May 4, 2005 passed by the Gujarat Sales Tax Tribunal in Appeal No.15 of 1996 by which order passed by the Commissioner of Sales Tax under Section 62 of the Act is confirmed; and, (3) the judgment and order dated September 29, 2006 passed by the Gujarat Value Added Tax Tribunal in Rectification Application No.17 of 2005 rejecting the rectification application submitted by the petitioner.

3. Briefly stated, the facts giving rise to the

present petition are that the petitioner-firm is engaged in the business of manufacturing and marketing of a product known as *"winnowing fan".* According to the petitioner, the winnowing fan is an agricultural implement covered under Entry 11 of Schedule 2A of the Act and is not an agricultural machinery. It is the case of the petitioner that an exemption notification was issued by the State Government in exercise of powers under Section 49(2) of the Act, which came into effect from April 1, 1996 by which sales of agricultural implements have been exempted from the payment of sales tax. According to the petitioner, the winnowing fan manufactured by it would be covered under the said exemption notification and would be inassessable to tax. The petitioner submitted an application for determination of the questions referred to in the said application, under Section 62 of the Act to the Commissioner of Sales Tax. By order dated August 30, 1996, the Commissioner of Sales Tax determined that the winnowing fan sold by the petitioner is an agricultural machinery and since the winnowing fan is an agricultural machinery, the petitioner would not

get the benefit of notification issued under subsection (2) of Section 49 of the Act. Feeling aggrieved, the petitioner preferred an appeal under Section 65 of the Act before the Gujarat Sales Tax Tribunal, which was dismissed *vide* order dated May 4, 2005. The Tribunal recorded the following findings:

> *"On reading of this entry it is clear that agricultural implement operated exclusively by human or animal agency is exempted under said entry so the request made by Mr.Vasavada the Winnowing Fan operated through Electric Power be considered as covered by entry 2 and Schedule 1 cannot be accepted."*

It was further held by the Tribunal that even if the Winnowing Fan was considered as agricultural implement exclusively used for agricultural purposes, the benefits of exemption under Entry 59 of the notification issued under Section 49(2) of the Act would not be available to the petitioner since the petitioner had sold its Winnowing Fan on March 23, 1996, that is before the notification came into effect.

4. Therefore, the petitioner filed

Rectification Application under Section 72 of the Act as it felt that there were contradictions in the findings recorded by the Tribunal, which amounted to mistake of facts. The Rectification Application came to be decided on September 29, 2006 by the Gujarat Value Added Tax Tribunal, which came to the conclusion that there was no mistake of fact in the judgment of the Tribunal and, therefore, no rectification was required to be made. Consequently, the said application was dismissed.

Aggrieved by the dismissal of the said Rectification Application, the petitioner has approached this Court by filing the instant petition and claimed reliefs, which are noticed earlier.

5. Mr.P.K.Jani, learned counsel for the petitioner, contended that the winnowing fan manufactured by the petitioner is an agricultural implement since it is exclusively used for agricultural operations and, therefore, the petitioner is entitled to get the benefit of notification dated March 30, 1996 issued under

Section 49(2) of the Act wherein Entry 59 has been specifically added. After referring to Entry 59 of the said notification, which reads as under:

1	***2***	***3***	***4***
59	*Sales of Agricultural implements exclusively used in agricultural operation*	*Whole of sales tax*	*-*

the learned counsel for the petitioner stressed that the winnowing fan manufactured by the petitioner cannot be termed as 'agricultural machinery' but is an 'agricultural implement'. In support of this contention, the learned counsel referred to judgment of the Supreme Court in ***M/s.D.H.Brothers Pvt. Limited vs. Commissioner of Sales Tax, U.P., Lucknow, A.I.R. 1991 SC 1992*** and has emphasised that an agricultural implement is an implement that is used in agriculture. Referring to paragraph 4 of the said judgment, wherein the expression “agricultural purposes” has been explained, the learned counsel for the petitioner emphasised that since the product manufactured by the petitioner is exclusively used for agricultural purposes and agricultural operations, it should be

considered to be an agricultural implement and not an agricultural machinery.

6. Per contra, Ms.Krina P. Calla, learned Assistant Government Pleader for the respondents, contended that the winnowing fan manufactured by the petitioner cannot be considered as agricultural implement, but is agricultural machinery since it operates on electric power and is neither operated manually nor through any human or animal agency and, therefore, the benefit of tax exemption as contemplated by notification dated March 30, 1996 cannot be extended to the winnowing fan manufactured by the petitioner. It was further contended that the petitioner could not have filed an application for rectification under Section 72 of the Act since the said section contemplates filing of such an application only if there is mistake of fact and not when an interpretation of law is required to be made. It was argued that what is challenged in the petition is the order of the Tribunal rejecting the rectification application and as the said order is not shown to have been passed either in excess of

jurisdiction or without jurisdiction or in contravention of the rules of natural justice, by the Tribunal, the petitioner is not entitled to writ of certiorari more particularly the Tribunal has not committed an error apparent on the face of the record. In support of this contention, Ms.Krina P. Calla, learned Assistant Government Pleader, brought to the notice of this Court the principle laid down by the Supreme Court in the case of ***Syed Yakoob vs. K.S.Radhakrishnan & Ors., A.I.R. 1964 SC 477***.

7. This Court has heard Mr.Prakash K. Jani, learned counsel for the petitioner, and Ms.Krina P. Calla, learned Assistant Government Pleader for the respondents at length and in great detail. Before considering the rival submissions advanced at the Bar, it would be advantageous to notice certain relevant statutory provisions of the Act.

8. Section 5 of the Act deals with sales and purchases of certain goods free from all tax and reads as under:

> ***"5. Sales and purchases of certain goods free from all tax.***

> *(1) Subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule I, no tax shall be payable on the sales or purchases of any goods specified in that Schedule.*
>
> *(2) The State Government may, by notification in the **Official Gazette** add to, or enlarge, any entry in Schedule I, or relax or omit any condition or exception specified therein; and there upon, the said Schedule shall be deemed to be amended accordingly.*
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> *(3) Every notification issued under sub-section (2) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State legislature or to such modification as the stage legislature may make, during the session in which it is so laid or the session immediately following. Any rescission or modification so made by the State Legislature shall be published in the **Official Gazette** and shall there-upon take effect."*

A perusal of subsection (1) of Section 5 indicates that subject to conditions or exceptions as mentioned, no tax is payable on the sales or purchases of *any goods* specified in column 3 of Schedule I to the Act.

(*Emphasis supplied).*

Subsection (2) of Section 5 provides that the Government, by notification in the official gazette, has power to add to, and enlarge any entry in Schedule I or relax or omit any condition or exception specified therein. Relevant entry in this regard is Entry 2(i) of Schedule I which provides that the sale or purchase of agricultural implements (excluding *varat* and *varatadi)* worked or operated exclusively by human or animal agency, exclusively used in agricultural operations and the parts thereof which are ordinarily not also used otherwise than as such parts, is exempt from payment of the sales tax.

8.1 The above entry is to be read in consonance with Section 49(2) of the Act, which reads as under:

> "***49. Exemptions.***
>
> *(1) xxx xxx xxx*
>
> *(2) Subject to such conditions as it may impose, the State Government may, if it considers it necessary so to do in the public interest, by notification in the* ***Official Gazette,*** *[exempt any specified class of sales or of specified sales or of purchases] from payment of the whole or any part of [the tax] payable under*

the provisions of this Act.

(3) xxx xxx xxx"

(Emphasis supplied).

8.2 In exercise of powers under Section 49(2) of the Act, notification dated March 30, 1996 was issued whereby Entry 59 regarding sales of agricultural implements exclusively used in agricultural operations was added with effect from April 1, 1996.

8.3 A conjoint and meaningful reading of the provisions of Section 5 and Section 49 of the Act makes it very clear that Section 5(1) specifies that no tax shall be payable on the sales or purchases of any goods specified in the schedule whereas Section 49(2) of the Act empowers the Government to issue notification to exempt class of sales or of specified sales or purchases. The goods as specified in Entry 2(i) of Schedule I are agricultural implements worked or operated exclusively by human or animal agency exclusively used in agricultural operations, but the implements, *varat* and *varatadi,* have been excluded. What is exempted by the notification issued under

Section 49(2) of the Act is sales of agricultural implements exclusively used in agricultural operations, but it does not contemplate a different kind of goods, which have been exempted under Section 5 of the Schedule.

9. The product manufactured by the petitioner is winnowing fan. It is not disputed that the winnowing fan is not worked or operated exclusively by human or animal agency. It is an admitted fact that the said winnowing fan manufactured by the petitioner is operated by electric power. This being the position, it cannot be included in Entry 2(i) of Schedule I. Therefore, it cannot be considered to be an agricultural implement, which is exempted from sales tax as contemplated by the Schedule. Since it is operated by electric power, it is an agricultural machinery, which is not covered by the said Schedule nor covered by the exemption notification issued under Section 49(2) of the Act.

10. The expression “agricultural implements” will have to be understood in the light of the

definition of the word 'agriculture' as given in the Act. As per Section 2(1) of the Act, 'agriculture' with all its grammatical variations and cognate expressions includes horticulture, the raising of crops, grass or garden produce and also grazing but does not include dairy farming, poultry farming, stock breeding or the mere cutting of wood or grass or gathering of fruit. Therefore, agricultural implements would mean those implements which are used for the raising of the crops. As noticed earlier, no tax is payable on the sales or purchases of agricultural implements worked or operated exclusively by human or animal agency exclusively used in agricultural operations. Subsection (2) of Section 5 of the Act, empowers the State Government to add to or enlarge any entry in Schedule I or relax or omit any condition or exception specified therein. If it was the intention of the State Government to specify agricultural implements worked or operated by electrical power as goods on which no tax should be payable, nothing prevented it, from issuing appropriate notification under Section 5(2) of the Act by enlarging the meaning of the expression

“agricultural implements” as given in column 3 of Schedule I to the Act or relaxing or omitting the condition that agricultural implement on which tax is not payable should be worked or operated exclusively by human or animal agency. However, it is an admitted position that no notification is issued by the State Government under Section 5(2) of the Act either enlarging the meaning of the expression “agricultural implements” as given in Column 3 of Schedule I of the Act or relaxing or omitting the condition specified with reference to entry of agricultural implements mentioned in column 3 of Schedule I of the Act. If the contention of the learned counsel for the petitioner that agricultural implements worked or operated by electricity stand exempted from payment of tax in view of notification issued under Section 49(2) of the Act is accepted, it would amount to construing the said exemption notification as enlarging the meaning of the expression “agricultural implements” as given in Column 3 of Schedule I of the Act or relaxing or omitting the condition that agricultural implements on which tax is not payable should be worked or operated exclusively by human or

animal agency though no such notification is issued under Section 5(2) of the Act. The acceptance of construction of exemption notification as suggested by the learned counsel for the petitioner would render the entry relating to “agricultural implements” as contained in Column 3 of the schedule I of the Act, redundant and otiose. Such a course is not permissible and would be contrary to well-settled cannons of interpretation of exemption notifications. Since the goods manufactured by the petitioner, i.e. the winnowing fan, is not liable to be exempted from tax under Section 5 of the Act, as a consequence thereof sales or purchases of that product cannot be regarded as having been exempted under the notification dated March 30, 1996 issued in exercise of powers under Section 49(2) of the Act as the said notification relates to the sales of agricultural implements. The notification does not specify which are the agricultural implements, sales of which are exempted from the taxes. This has been made very clear in Entry 2(i) of the Schedule I, which enumerates the nature of agricultural implements, which are liable to be exempted from the

levy of taxes. The winnowing fan manufactured by the petitioner has not been included in the agricultural implements, which are mentioned in Entry 2(i) of the Schedule 1. Therefore, the benefit of exemption of sales tax under the notification dated March 30, 1996 cannot be extended to the sales of such winnowing fan.

11. On a harmonious reading of Section 5, Schedule I and the notification issued under Section 49(2) of the Act, this Court is of the opinion that there are no contradictions in the judgment of the Tribunal or in the findings recorded by the Tribunal while dismissing the appeal which was directed against the order passed by the Commissioner of Sales Tax under Section 62 of the Act and, therefore, the Tribunal was justified in rejecting the rectification application. The Tribunal while rejecting the appeal filed against order passed under Section 62 of the Act held that even if it was assumed that the winnowing fan of the petitioner was treated as an agricultural implement, then also the benefit of the exemption notification could not be availed of by the

petitioner since the said winnowing fan had been sold on March 23, 1996, i.e. prior to the addition of Entry 59 by notification dated March 30, 1996. While rejecting the rectification application, the Tribunal has held that the above quoted finding was recorded in the alternative and no mistake of fact was committed by the Tribunal. This Court also finds that the rectification application filed by the petitioner under Section 72 of the Act was rightly rejected by the Tribunal since Section 72 of the Act contemplates rectification of any mistake of fact, which is apparent from the record and does not envisage correction of interpretation of law.

12. Lastly, as rightly pointed out by Ms.Krina P. Calla, learned Assistant Government Pleader, the prayer to grant writ of certiorari cannot be accepted because it is not pointed out by the learned counsel for the petitioner that while rejecting the rectification application, the Tribunal has acted without jurisdiction or in excess of jurisdiction or in contravention of the rules of natural justice. In this regard, it would be appropriate to reproduce the

relevant portion of the judgment of the Supreme Court in the case of ***Syed Yakoob vs. K.S.Radhakrishnan & Ors. (supra),*** contained in Head-note (b), which reads as under:

> *"The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.*
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> *A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive*

jurisdiction of the Tribunal, the points cannot be agitated before a writ Court."

Applying above quoted principles to the facts pleaded in the petition, this Court finds that no case is made out by the petitioner for issuance of a writ of certiorari in exercise of supervisory jurisdiction of this Court. Thus, this Court finds that there are no merits in the present petition, and the same is liable to be rejected.

13. For the foregoing reasons, the Writ Petition fails and is dismissed. Notice is discharged. There shall be no orders as to costs.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra